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7
8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10
11 ROBERT L. YOUNG,

12 Plaintiff,

13 vs.

14 ILLINOIS UNION INSURANCE
15 COMPANY; ACE WESTCHESTER
SPECIALTY CLAIMS; and DOES 1
through 50, inclusive,

16 Defendants.
17
18

No. C 07-05711 SBA

**NOTICE OF MOTION FOR
PARTIAL SUMMARY
JUDGMENT; CERTIFICATION
OF PRE-FILING MEET AND
CONFER**

DATE: 8/26/08
TIME: 1:00 p.m.
CTRM: 3

[FRCP 56(a) and (b)]

19 TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

20 NOTICE IS HEREBY GIVEN that on August 26, 2008, at 1:30 p.m., or as
21 soon thereafter as counsel may be heard by the above-entitled Court, located at the
22 United States Northern District Court, Oakland Division, 1301 Clay Street,
23 Oakland, California, Department 3, Plaintiff Robert L. Young ("Young") will and
24 hereby does move the Court under FRCP 56 for an order granting partial summary
25 judgment of the issue that defendants owed their insured, Young, a duty to defend
26 him against Cross-Complaints filed in a lawsuit titled *TRI Commercial Real Estate*
27 *Services, Inc., et al. v. Raybern Foods, Inc., et al.*, Alameda County Superior Court
28 Case No. RG04141329, and breached that duty.

1 The basis for this motion is that there was potential coverage for the claims
2 asserted in the underlying litigation and Cross-Complaints by Raybern and John
3 Fults against defendants' insured, Young, and therefore defendants owed Young a
4 duty to defend him in the underlying litigation and Cross-Complaints.

5 This motion is based upon this Notice and Motion, the accompanying
6 Memorandum of Points and Authorities, Declaration of Paul W. Windust, and
7 Declaration of Robert L. Young. The motion is further based on the Court's files
8 and records in this action and on such other oral argument or documentary evidence
9 as may be received by the Court at the hearing of the motion.

10 Plaintiff hereby certifies that he has met and conferred, by and through counsel
11 with defendant prior to the filing of this motion as required by Rule.

12 Date: July __, 2008

BERDING & WEIL LLP

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15 By: _____
16 Paul W. Windust
17 Attorneys for Plaintiff
18 ROBERT L. YOUNG

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